

C 1665
Not a Law
L 45

Reasons for the Bill for regulating the Six

Clerks Office in Chancery, with an Answer to the Six Clerks Case.

The Bill, 1. Complains of 3 Mischiefs } 1. Disorders.
2. Delays.
3. Unnecessary Expence. } The Cause assigned is { The want of a competent number of experienced Attorneys } which will best appear on examination to dispatch the business,

2. The Remedy provided is { 1. The increase of the number of Attorneys proportionable to the business, and in that their qualifications of experienced & able Clerks bred up in the Office as they anciently were and ought to be, *prout patet per Stat. 12. Ric. 2. 12. & 14. & 15. H. 8.* } And neither of these can in themselves be prejudicial to the Subject, but are of great advantage.

2. The abatement of Fees, } 1. In Copies from 8 d. to 4 d. per fol.
2. In taking away the ingrossed Bill annexed to Commissions, being 6 d. per fol.

The Six Clerks Reasons or Objections against the Bill are,

1. That they are antient (1) Officers, and have been time out of (2) mind, in the same Condition as now they are, and have been incorporated (3) by Act of Parliament, and several Letters (4) Patents.

Answ. 1. They are, and anciently were but Clerks or Attorneys, *propria manibus scribes*, under the Mr. of the Rolls (the Mr. of the Office) in whose name all Writs pass, and as such receive the Attorneys Fee of 3 s. 4 d.

2. This is denied, and the contrary will be proved in several instances: or, if they were, it makes the matter more Parliamentary; and if a Grievance, 'tis conceived ought to be remedied.

3. They are not incorporated as Attorneys: 31 H. 8. there is an Act, That for having the House [ONLY] where the Office is kept, they are Incorporated: but that shews that the Parliament thought not fit to incorporate them to any other end; for the very reason ('tis not unlikely) now alledged for increase. Besides, in 31 H. 8. six Attorneys were then more competent for the business than 60 now.

4. 'Tis true, that 16 Eliz. they and the 3 Clerks of the Petty-bagg are incorporated as Clerks of the Inrolments, &c. with which this Bill does not intermeddle. And 11 Car. 1. they got a Patent to Incorporate them as Attorneys (to prevent the increase of their number) that no more should be made then six: with power to make by-laws to divide the Clients amongst them by the Letters of the Alphabet (as it was by the late Lord Chancellors Ordinance) and with a Grant of some incroached Fees, and such like, which being in the nature of a Monopoly, and against Law, Sir Dudley Diggs then Mr. of the Rolls, finding himself grieved thereby, and that the same incroached on other Offices, on Petition to the King and Council 3 December 1637. got the Legality thereof referred to the Judges. After several Debates, that Patent was delivered up, and never since observed by themselves or others; and if now insisted on, 'tis conceived more fit to be examined in Parliament.

Object. 2. That the Six Clerks have always had a (1) Freehold in their Offices for their Lives; and their Fees have been (2) time out of mind. But the Clerks have had no other Interest, then as (3) Servants to them.

Answ. 1. That as they are Clerks of the Inrolments, Comptrollers or Supervisors of the Hanaper, Riding-Clerks, &c. or any thing that doth or can go in dividend amongst them, their Interest in Places or Fees are not questioned; nor does this Bill at all intermeddle therewith; but only as they are Attorneys 'twixt Party and Party, which cannot be executed by Deputy, or go in Divident, nor on any pretence be termed a Freehold. And what if *de facto* they have what is alledged? yet, if a general Grievance (they being but Ministers *pro bono publico*) it's the more proper and necessary to be remedied by Parliament. (Better a particular Mischief, then a general Inconvenience.)

2. Their Fees were never confirmed, nor yet time out of mind, as now they are.

3. If the Clerks be but as Servants (which is denied) 'tis the greater Reason for redress. 'Tis agreed they do (and indeed only can do) the business. But what obligation is on them by Oath or Fee for doing thereof? Or what certainty hath the Client, when they may (as the six Clerks assume, and have lately put in practice) be turned off at pleasure?

But these (as many other of the Particulars objected) amount but to the begging of the Question, or for want of matter to the framing Objections from the practice of such things as are complained of.

Object. 3. No Crime hath been pretended or objected against any of the Six Clerks in any of their Offices.

Answ. The most proper season for this will be, (as is humbly conceived) on examination.

Object. 4. The employment of the Six Clerks consists as well in the immediate service (1) of the King, as in business between party (2) and party.

Answ. What concerns the King, is in the Inrolments, Riding-Clerks, &c. with which this Bill doth not meddle; And extends onely to redress the disorders, &c. in causes between party and party: for which no six Persons can be sufficient, being an employment that cannot be executed by Deputy.

Object. 5. That the Six Clerks onely, and not the Under-clerks, are in Law esteemed the Clerks (1) in Court, for managing the business; and are onely answerable (2) to the Suitor for miscarriages. It is therefore requisite, that Persons of Estate and Quality should be in those Offices.

Answ. 1. The Clerks do really manage the business, and the Court and Client looks on them, and calls them Clerks in Court; and if they be not so in Law, it is the more reason they should be so. If there be onely six that by Law are bound to manage the business, and those six (as it is evident) cannot do it; it is a

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2. They will not grant that they should forfeit their places for the fault of the Under-clerk. The Attorney, whose livelyhood depends on his employment, lays the same to pawn for every the least miscarriage; for which he is lyable to be turned out by the Court: whereas that which others pretend to, serves but the better to protect them against any whom they shall injure, (and where they are but as Deputies accomptable for the profit (as some of them are) under a small Salary, Who shall answer for them?)

Object. 6. Much of the Office of a six Clerk hath been executed in person.

Ans. The more reason for increase.

Object. 7. The Under-clerks led by the same levelling Principles in 1654, procured an Ordinance from Cromwel, for making them Attornies; but the pretended Parliament in the year 1656 set it aside.

Ans. It is humbly conceived, it is no more levelling in Chancery to make an Attorney of an ancient experienced Clerk of 40 or 50 years standing, then it is in other Courts, who walk by that rule; and that it is the greater fault that six Gentlemen never brought up in the employment (as anciently they were and ought to be) should leap over so many ancient Clerks heads, to the damage of the King and his People; and confine the subject to so small a number, when publique good and the business of the Court requires a greater. It is denied the Clerks procured the Ordinance: and the proceedings of a pretended Parliament, no rule for a legal Parliament.

Object. 8. Abatement of Fees is the promoters avarice.

Ans. The endeavouring a redress of a publique evil, whereof the Wisdom of the Nation in Parliament is to be the Judge, should not be branded with ignominious and reproachful terms; and if the abatement of Fees amongst many be styled avarice, what name deserves a Pleader for continuance of exorbitant Fees, and Fees for things useles to the People, and that amongst so few as the Objectors are!

Object. 9. The multiplication of Officers, &c. that shall have the keeping of Records, will put the Subject to great charge, &c.

Ans. 1. The Master of the Rolls is Onely Officer and Record-keeper: The Six Clerks usurping the name of Officers, and making so many Offices, hath made the confusion they are in: It is conceived they will be better kept (as in other Courts) in one Treasury, or Record-house, under proper Alphabets, then six.

Object. 10. That when business was more then now, it was dispatched by the (1) Six Clerks, with their Under-clerks acting under them. And there can be no ground for this pretence, but that the Under-clerks would now act as Masters, without any Superiour to inspect their proceedings, by whose misdemeanors alone all delays and disorders have been occasioned.

Ans. 1. No six can advise the Clients, answer their Post-letters, manage their Causes, or draw special Writs or Decrees, or examine the same or Copy as they ought: And to commit the doing thereof to others, who lye under no obligation of Oath or Fee, is the thing complained of: nor in case of Interpleaders, or the like, where the Cause depends on nine or ten several and distinct Interests (as it often falls out, and there are such now depending) can six Attornies be sufficient: for the Defendants interests being opposite one to another, some of the six Attornies must of necessity be for and against his Client; which he cannot be in the same Cause, and for the same matter, if he observe his Oath.

2. The principal Question is not, whether the Clerks shall be made Attornies; but whether the number shall be increased, what the number shall be, and who, is left to be considered.

3. The Master of the Rolls is the onely Superiour, and can inspect them as well as his Majesties principal Officers in other Courts do a greater number.